

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 826 of 1981
With
CROSS OBJECTION No. 36 of 2007
In
FIRST APPEAL No. 826 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
GIYANIBEN RAMCHANDRA RATHI & 7 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MS ARCHANA AMIN for Respondents : 1 - 2.
NOTICE SERVED for Respondents : 3 - 5, 7,
MR ARUN H MEHTA for Respondents : 6, 8,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/06/2007

ORAL JUDGMENT

1. The appellant, Insurance Company, being aggrieved by the judgment and award dated 30.3.81, passed in M.A.C. Petition No. 78/79 by the Motor Accident Claims Tribunal [Main], Palanpur, District: Banaskantha, awarding sum of Rs. 1,49,000/- in favour of the original claimants is before this Court with a submission that the Tribunal was absolutely unjustified in holding the Insurance Company liable to any extent. It is to be noted that Gujarat Electricity Board, after service of the notice has filed Cross Objections submitting, inter alia, that driver of the Jeep No. GTQ 7552 – respondent no.5, which was owned by Indian Oil Corporation – respondent no.6, was solely negligent as he had suddenly applied the brakes to the vehicle and under the circumstances, no award could be made against the Gujarat Electricity Board. Though it is submitted by Ms. Maya Desai, learned counsel for the GEB that the original claimants-respondents no. 1 & 2 have filed Cross Objections, but Ms. Archana Amin, learned counsel for the original claimants

submits that the original claimants/respondents no. 1 and 2 have not filed any Cross Objections.

2. Shri Rajni H. Mehta, learned counsel for the appellant-Insurance Company firstly submitted that the Insurance Company is at all not liable in the matter, but later on fairly conceded that in the full Bench Judgement of this Court in the matter of *New India Assurance Company v Thakor Bhemaji Ganeshji*, reported in 1993 [2] GLR 1051, it is held that liability of such employee would be covered under sub-clause [1] of Clause [b] of Section 95 of the Motor Vehicles Act. He, however, submits that the full Bench of this Court has held that liability of the Insurance Company would be limited to the extent of Rs. 50,000/- only. He also submits that in yet another judgment in the case of the *New Assurance Company Limited v. Divyaben Keshavlal Kacha and others*, rendered in First Appeal No. 491/98, decided on 11.8.05, Division Bench of this Court has observed that the liability of the Insurance Company would be to the extent of Rs. 50,000/-. So far as the

judgment of the full Bench of this Court is concerned, the same has binding effect.

3. So far as the effect of the full Bench judgment is concerned, this Court must hold that the Insurance Company is liable to the tune of Rs. 50,000/- and rest of the liability of Rs. 99,000/- should be borne by the GEB and the driver. However, the liability can only be fixed after the Cross Objections submitted by the GEB are finally disposed of.

4. Gujarat Electricity Board submits that the driver of Jeep No. GTQ 7552 and not the GEB should be held answerable to the claim made by the claimants, because, driver of the Jeep No. GTQ 7552 was driving negligently and his negligent act had led to the accident. On being asked as to how Cross Objections against one of the co-respondent would be maintainable, Ms. Desai, learned counsel for the GEB placed strong reliance on a Single Bench judgment of this Court in the case of *National Insurance Company v. Diwaliben, widow of Vanabhai Lalubhai & others reported in 1982 [1] GLR 474*. It is

submitted that present is an exceptional case, therefore, in light of the judgment of the Supreme Court in *Pannalal v. State of Bombay and others*, reported in AIR 1963 SC 1516, Cross Objections are maintainable.

5. Shri Rajni H. Mehta, learned counsel for the appellant and Ms. Archana Amin, learned counsel for the claimants oppose the Cross Objections with the submission that the judgment in the matter of National Insurance Company [supra] was on altogether different facts, according to them, Cross Objections against a co-respondent, as a matter of course and law, are not maintainable unless rejection of the appeal is likely to adversely affect one respondent and right of another respondent is to be enlarged. Except in such cases, Cross Objections against the co-respondent would not be maintainable.

6. Perusal of Rule 22 of Order XLI of the Code of Civil Procedure would make it clear that where a party has right to file an appeal against any part of the judgment and decree, then, such party can take out Cross Objections against the

appellant who has filed the appeal, in such a case, right of such respondent to file cross objections would otherwise be not adversely affected. In a given case, where a claimant files an appeal for enhancement, driver, owner and the Insurance Company of the offending vehicle can certainly file Cross Objections with a submission that not only the appeal should be dismissed, but all the findings recorded by the Tribunal should be set aside and the entire claim be dismissed.

7. In a case where there are two sets of the vehicles involved and the claimant files an appeal for enhancement, then, any party against whom the Tribunal has fixed the liability would be entitled to file Cross Objections.

8. In the matter of National Insurance Company [supra], Cross Objections were not filed against the co-respondent. In fact, an appeal was filed by the Insurance Company and the claimant without filing separate appeal for enhancement against other defendant who was joined as co-respondent had filed Cross Objections. It was

contended before the learned Single Judge that if ground of Cross Objections was to enhance the liability of another co-respondent, then, such Cross Objections would not be maintainable. The Court held that in an appeal filed by the Insurance Company, on one side claimant would be entitled to take out Cross Objections and if the Cross Objections are rejected on the technical ground that the liability of co-respondent is to be enhanced, then, such matter would become an exceptional case for maintaining Cross Objections against co-respondent, because, if the liability of the Insurance Company is to enhance then, the liability of co-respondent would also be enhanced.

9. In exceptional cases and circumstances, the Courts have observed that Cross Objections against co-respondent would be maintainable. Present is not a case where Cross Objections have been taken out against the appellant. Gujarat Electricity Board was entitled to file an independent appeal, but it felt satisfied and content by not challenging the award of the

Tribunal. If they did not file an appeal for some reason or the other, then, at the appellate stage in an appeal at the instance of the Insurance Company seeking reduction of the liability, the GEB cannot be allowed to say that the party which was exonerated, in fact, was liable to answer the claim. Against exoneration of driver, owner and Insurance Company of Jeep No. GTQ 7552, nobody had filed an appeal. If GEB had any right to file an appeal challenging their liability or seeking to fix the liability against the owner, driver or Insurance Company of jeep No. GTQ 7552, then, they were required to file an appeal. Their Cross Objections would not be maintainable against the co-respondent.

10. Consequently, Cross Objections filed by the GEB are dismissed/rejected and the appeal filed by the appellant-Insurance Company is allowed with directions that their liability would be to the extent of Rs.50,000/- and consequent interest and cost only.

11. If the appellant -Insurance Company has deposited the entire claim amount and the same

has been paid to the claimants, then, the Insurance Company, in view of this judgment would be entitled to recover additional amount which they had deposited, from the GEB by taking out execution of this order. In case, the money deposited by the Insurance Company has not been paid in full to the claimants, then, to the extent of Rs. 50,000/- interest thereon only would be withdrawn by the claimants and rest of the amount would be refunded to the Insurance Company. It is hereby further directed that the GEB shall be obliged to deposit the amount of their liability with interest as awarded by the Tribunal within a period of three months from today. On deposit of the said amount, it may be paid either to the claimants or to the Insurance Company in accordance with their entitlement.

[R.S. GARG, J.]

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